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ABSTRACT

This report discusses federal regulations requiring parental consent before schools access Medicaid reimbursement for services provided to students with disabilities. It begins by explaining that in 1988, the Medicare Catastrophic Coverage Act allowed Medicaid to pay for covered medical services provided to Medicaid-enrolled children with special health care needs on their Individualized Education Program or Individualized Family Service Plan. According to regulations for the Individuals with Disabilities Education Act (IDEA), the financial responsibility of each non-educational public agency must precede the financial responsibility of the local education agency. However, parents may not be required to sign up for or enroll in public insurance programs in order for their child to receive free appropriate public education. Although IDEA does not require prior consent to access a family's public insurance coverage, the report reviews requirements under the Family Educational Rights and Privacy Act that require informed parent consent be obtained before a school can disclose information abut a student with a disability, including providing information to Medicaid to support a claim for benefits. Also, regulations for Part B of IDEA state that schools may access a parent's private insurance only if the parent provides informed consent each time the benefits are accessed. (CR)

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Quick Turn Around

Project FORUM

QTA – A brief analysis of a critical issue in special education

Medicaid: Parent Consent Issues

January 2002

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Purpose and Method

Project FORUM recently completed an update on state programs for obtaining Medicaid reimbursement for services provided to students with disabilities (Ahearn, 2001). This document addresses one issue related to that topic—parental consent for schools to access Medicaid benefits. It is completed as a part of Cooperative Agreement #H326-F000001 between Project FORUM at the National Association of State Directors of Special Education (NASDSE) and the U. S. Department of Education Office of Special Education Programs (OSEP). Data were gathered through phone interviews and a review of documents, and this summary is intended to inform state and district staff of important issues related to parental consent for accessing Medicaid benefits.

Sincere appreciation is acknowledged for the valuable assistance in this task provided by Sue Abderholden of the Minnesota PACER Center, Charles Lakin, Director of the Research and Training Center on Community Living at the University of Minnesota, Kathleen Boundy of the Education and Law Center in Boston, and Anne Henry of the Minnesota Disability Law Center. Resources for additional information on this topic are included in the references list at the end of the document.

Background

Medicaid is a federal/state cost sharing benefit program for health and medical services for low-income individuals that was established as Title XIX of the Social Security Act in 1965. Each state must submit a plan to the federal government that explains how it will cover mandatory services listed in the law, but there is much variation among states regarding which non-mandatory services will be provided and the specific conditions that will be applied. Originally, Medicaid benefits could not be used for services provided under the Individuals with Disabilities Education Act (IDEA) but, in 1988, the Medicare Catastrophic Coverage Act allowed Medicaid to pay for covered medical services provided to Medicaid-enrolled children with special health care needs on their individualized education program (IEP) or individual family service plan (IFSP).

Another aspect of the complex Medicaid provisions is the availability of home and community waivers that states are allowed to use with flexibility to meet the needs of its population. One type, known as the "Katie Beckett" waiver [Section 1915(c)] allows states to provide Medicaid benefits to a family in order to have health care services and supports that keep their child at home rather than in a hospital or institution.

According to regulations for Part B of IDEA, the financial responsibility of each non-educational public agency, "including the State Medicaid agency and other public insurers of children with disabilities, must precede the financial responsibility of the local education agency (or the state agency responsible for developing the child's IEP)" [34CFR §300.142(a)(1)]. However, parents may not be required to "sign up for or enroll in public insurance programs in order for their child to receive FAPE (free appropriate public education)" [34CFR §300.142(c)(2)(i)]. The remainder of this document focuses on issues and implications arising from these regulations.

Parental Consent and Payment Issues

IDEA regulations draw some distinctions between coverage by public insurance and private insurance:

Public insurance [34CFR 300.142(e)]
Schools may use Medicaid or other public insurance for IDEA covered services, and there are special conditions involved. Schools may not require parents to incur any out-of-pocket expenses such as a co-pay or deductibles. In addition, the school may not use a child's benefits under a public insurance program if that use would:

- decrease available lifetime coverage or other benefit;
- cause the family to pay for services that would otherwise be covered by the public insurance program for services outside of the time the child is in school;
- increase premiums or lead to the discontinuation of insurance; or,
- risk loss of eligibility for home and community-based waivers based on aggregate health-related expenditures.

Schools must take the necessary steps to ensure that they are in compliance with these provisions. School staff should make sure that parents are aware of how the school's access to the family's public insurance benefits is limited. However, IDEA has no specific requirement that parents provide informed consent for schools to access their *public* insurance benefits.

Although IDEA does not require prior consent to access a family's public insurance coverage, there are some requirements under the Family Educational Rights and Privacy Act (FERPA) that may have that effect. FERPA requires informed parent consent be obtained before a school can disclose information about a student with a disability, and this would include providing information to Medicaid to support a claim for benefits. (Center for Law and Education, n.d.). A response to a state inquiry by the Family Compliance Office (part of the U. S. Department of Education that enforces compliance with FERPA) also supports this approach that "neither the IDEA nor FERPA allows the disclosure of personally identifiable information from student education records to a state Medicaid agency in the absence of parental consent" (*Wisconsin*, 1997).

Private Insurance [34CFR 300.142(f)]
Regulations for Part B of IDEA state that schools may access a parent's private insurance only if the parent provides informed consent *each time* the benefits are accessed. Parents must also be informed that their refusal to permit access to their private insurance does *not* relieve the school of its responsibility to ensure that all required

services are provided at no cost to the parents.

Regulations for Part B of IDEA also provide that a school may pay deductibles or co-pay amounts if it is a block to accessing the family's insurance benefits. The IDEA regulations specifically state: "If a public agency is unable to obtain parental consent to use the parent's private insurance, or public insurance when the parent would incur a cost for a specified service required under this part, to ensure FAPE the public agency may use its Part B funds to pay for the service" [§300.142(g)(2)].

There are some other issues between Medicaid and IDEA requirements related to benefit coverage that pose dilemmas for parents and schools. Medicaid requires that any other third party liable to pay for services, such as a private health insurance plan, be billed first. Medicaid will pay only for the amount of the claim that exceeds the third party's liability [34CFR 433.139]. Thus, if parents are covered by both private health insurance and Medicaid, the school must bill the private insurer first. But, parents may withdraw their permission to bill their insurance at any time. If the parent does not want the school to bill the private insurer for any reason, then, given the Medicaid requirement to bill private insurers first, the school cannot bill Medicaid either. In such a case, the school would be responsible for the cost of services in the child's IEP.

There are often other costs involved for those who receive Medicaid benefits under waivers or TEFRA, (Tax Equity and Fiscal Responsibility Act of 1982), a federal law that allows certain children to be eligible for Medicaid without regard to the income of their parents. For example, Minnesota imposes a fee on parents whose children receive services under such provisions that can amount to several hundred dollars a month. As mentioned above, schools may not require parents to cover such costs.

Observations

It is important that states ensure that LEAs and school personnel have clear information about the issues of parental consent as well as the legal requirements for, and restrictions on, billing for services when they are accessing Medicaid reimbursement for IDEA costs. It is also important to note that a state may have its own laws about parental consent, such as the Minnesota law that requires that consent be obtained for a school to access any type of insurance the family is eligible to receive. Also, a state may have other requirements, such as state data practices, that govern the exchange of information among state agencies. Therefore, school personnel must carefully check on state laws, regulations and other policies that may impact on parental consent requirements.

In addition to the issues related to parent consent, it is important that school staff understand that, although the major Medicaid Program is not capped, some Medicaid programs do involve payments by parents and/or ceilings on benefits that represent a potential present or future cost to the family. Accurate understanding of these issues and the exact status of each family's Medicaid eligibility are essential to avoid misunderstandings and violation of IDEA requirements.

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